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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

NO. 961

MAX WRIGHT, Petitioner,

v.

MASONITE CORPORATION, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Introductory Note	1
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statutes, Federal Rules, and Regulations Involved	2
Statement of the Case	2
Argument:	
1. The Decision of the Court of Appeals is not in Conflict with the Substantive Law of North Carolina	4
2. The Petition Presents no Important Question which would Affect other Litigants	7
3. The Decision of the Court of Appeals is Correct	9
Conclusion	10

CITATIONS

Cases

Morgan v. High Penn Oil Co., 238 N.C. 185, 77 S.E. 2d 682	5

Page

Rylands v. Fletcher, L.R. 3, H.L. 330 6

Watts v. Pima Manufacturing Co., 256 N.C. 611, 124 S.E. 2d 809 6

Miscellaneous

28 U.S.C. 2101(c) 1

Restatement of the Law of Torts, Chapter 40, Scope and Introduction Note 6

Restatement of the Law of Torts, Sec. 825 6

Restatement Rules, Vol. 4, Sec. 286, 822, and Comments at pp 241-242 and pp 229-231 6

Restatement of the Law of Torts, Sec. 822 (m) and 825(a) 8

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INTRODUCTORY NOTE

For brevity and convenience, Max Wright, Petitioner, will sometimes be referred to herein as plaintiff and Masonite Corporation, Respondent, will sometimes be referred to herein as defendant. All italics in the text of this brief are supplied unless otherwise noted. Page references to the Appendix to Petition are designated (P-App. p. .....); page references to the original transcript of testimony are designated (T. p. .....).

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of North Carolina is reported at 237 F. Supp. 129 (1965). The opinion of the Court of Appeals of the Fourth Circuit is reported at 368 F. 2d 661.

JURISDICTION

The judgment of the Court of Appeals was entered on October 19, 1966. The petition for certiorari was filed on January 10, 1967. Jurisdiction of this Court is invoked by Petitioner under 28 U.S.C.A. 2101(c).

QUESTION PRESENTED

The sole question presented to this Court by the petition for certiorari is whether the opinion and decision of the trial court (Stanley, J) as affirmed by the opinion and decision of the Court of Appeals for the Fourth Circuit is in accord with the substantive law of North Carolina.

STATUTES, FEDERAL RULES, AND REGULATIONS INVOLVED

There are no statutes, rules, or regulations, either Federal or State, involved in this Petition.

STATEMENT OF THE CASE

The unique character of the facts of this case, including the Findings of Fact made by the trial judge, sets it apart from the usual controversy involving the law of nuisance. The distinctive features of this case were both recognized and relied upon by the trial and appellate courts.

Since legal principles properly find their application only when the facts coincide with the basic concept of law, the unusual circumstances of this case are of prime importance. Respondent respectfully requests this Court to direct attention to the Statement of Facts (supported by transcript references) appearing on pages 2-18, inclusive, in its brief filed in the Court of Appeals.

To the facts as found and relied upon, both the trial and appellate courts below applied the substantive law of the State of North Carolina. Both reached the same conclusion.

The trial court noted in its opinion that defendant had operated its business in the vicinity of plaintiff's store from 1954 until 1962; that during this entire period it used synthetic lacquers containing urea formaldehyde in finishing its products and exhausted the fumes from the roof of its building by means of several exhaust fans. (Actual distance from plaintiff's store approximately 250 feet). The trial court further noted in its opinion that when defendant's finishing plant was moved across Carolina Avenue in the summer of 1962 (178 feet from plaintiff's store—with two residences located much closer), that *"it continued its finishing operations in the identical manner as these operations had earlier been carried on."* (P-App., p. 18) Judge Stanley commented that during this period of several years: "At no time did the defendant receive any complaint from the plaintiff or any residents of the area with respect to fumes and odors being exhausted from its plant." (P-App., p. 18).

Additionally, this opinion recites:

(1) "The defendant was operating a legitimate business and, so far as is disclosed by the evidence; was

operating its business in strict compliance with all applicable municipal and other governmental rules and regulations." (P-App., p. 18).

(2) "The plaintiff did not associate the difficulties he was experiencing in his store with the activities of the defendant, and the defendant had no knowledge of the plaintiff's odor problems until February 1, 1963, three days before the plaintiff closed his store." (P-App,. p. 18).

(3) "No odor problem has been experienced in the community since about two weeks after the plaintiff closed his store, and the defendant has at all times continued to operate its business *in the same manner as before.*" (P-App., p. 19).

The opinion of the Court of Appeals (Haynsworth, Chief Judge) affirmed the District Court's dismissal of this action, again applying, *after exhaustive analysis,* the substantive law of North Carolina.

ARGUMENT

1. The decision of the Court of Appeals, affirming the decision of the District Court, is not in conflict with the substantive law of North Carolina.

Petitioner's sole ground for requesting this Court to review the judgment below is his contention that it is not in accord with the substantive law of North Carolina as reflected by the decisions of the North Carolina Supreme Court. Both the trial and appellate courts were consciously aware of the unique facts of this case in reaching their

respective decisions. Petitioner fails to mention these distinguishing factors in his petition.

The opinions below both pay tribute to the efforts by the North Carolina Supreme Court to define with some degree of clarity the basic principles of the law of nuisance and apply them to the facts of each case. In an effort to analyze and distill these basic principles, the North Carolina Supreme Court in *Morgan* v. *High Penn Oil Co.*, 238 N.C. 185, 77 S.E. 2d 682 (1954), said:

> "Much confusion exists in respect to the legal basis of liability in the law of private nuisance because of the deplorable tendency of the courts to call everything a nuisance, and let it go at that. (Citations omitted) The confusion on this score vanishes in large part, however, when proper heed is paid to the sound propositions that private nuisance is a field of tort liability rather than a single type of tortious conduct; that the feature which gives unity to this field of tort liability is the interest invaded, namely, the interest in the use and enjoyment of land; that any substantial nontrespassory invasion of another's interest in the private use and enjoyment of land *by any type of liability forming conduct* is a private nuisance; that the invasion which subjects a person to liability for private nuisance may be either intentional or unintentional; that a person is subject to liability for an intentional invasion when his conduct is unreasonable under the circumstances of the particular case; and that a person is subject to liability for an unintentional invasion when his conduct is negligent, reckless or ultrahazardous."

In *Morgan* v. *High Penn Oil Co.*, the Court cited both the *"Scope and Introduction Note to Chapter 40, American Law Institute's Restatement of the Law of Torts"* and *Section 825, Restatement of the Law of Torts.*

It is significant to note that the North Carolina Supreme Court, in addition to the Restatement Law, although citing eighty-eight (88) cases in its opinion in the *Morgan* case, neither *cited, mentioned,* nor *relied* upon the ancient doctrine of *Rylands* v. *Fletcher*, L.R. 3, H.L. 330.

Later, in 1962, the North Carolina Supreme Court, in *Watts* v. *Pima Manufacturing Co.*, 256 N.C. 611, 124 S.E. 2d 809, again relied on the *Restatement Rules* by citing Vol. 4, section 286, *Comments* a. and b. pp. 241-242, and Vol. 4, section 822, *Comments* g. and j., pp. 229 and 231. The Court, in applying these rules, pointed out that on the issue of reasonableness "no single factor is decisive; *all circumstances in a particular case must be considered.*"

The opinion of Judge Haynsworth analyzes in depth the pertinent decisions of the North Carolina Supreme Court After reviewing these authorities, Judge Haynsworth concluded:

> "North Carolina's Supreme Court, both substantively and verbally, has embraced the Restatement's Chapter 40 formulation and applied those principles in noxious gas cases. The court's language, simply but *emphatically, forecloses any suggestion that its embrace has been tentative, reluctant or reserved.*
>
> "Since, in this diversity case, we are required to apply North Carolina law, as declared by its highest court,

> we are not at liberty to disregard what it has done and said or, by a process of inference from extracted words not immediately germane, to attribute meanings to its opinions which are in conflict with the plain and unequivocal language that court has used in those same opinions when directly discussing the precise question before us" (P-App., p. 27).

It is clear the judgment below is in strict accord with the substantive law of North Carolina when such law is applied to the facts of this case. There is no conflict when it is readily apparent the State court would have been compelled to reach the precise result if confronted with the circumstances disclosed here. For this reason, the petition should be denied.

2. This case turns upon the facts peculiar to it and therefore presents no important question which would affect other litigants.

As previously indicated, the facts of this case, including those found by the trial court, create a set of circumstances unique in character. Some of these circumstances are: Petitioner' store and defendant's plant had operated in close proximity to each other (250 feet—178 feet) from 1954 until 1963, a period of nine years. (T-162, DX-1, T-602, DX-2). The odor problem complained of by plaintiff occurred in January 1963. (T-164) Plaintiff did not associate the difficulties he was experiencing in this store with the activities of the defendant, and defendant had no knowledge of the plaintiff's odor problem until February 1, 1963, three days before plaintiff closed his store. (P-App., p. 18). The defendant, both before, after, and during the odor problem, operated its business *in the same manner*. (P-App., p. 19).

Persons residing in homes directly between petitioner's store and defendant's plant never had food acquire an off-taste; never noticed any unusual odor in the neighborhood; and never had any problem of any sort at any time in respect to taste in food or odor in the atmosphere. (Appendix to Def. Brief in Court of Appeals, pp. 1-13, incl.). There has been no odor problem since February, 1963, although defendant's plant *has continued to operate in the same manner as before* (P-App., p. 19).

The foregoing are only a sampling of numerous facts which distinguish this case. In applying the basic principles of law to the instant case, the trial court specifically cited *Restatement of the Law of Torts,* sec. 822(m):

> "There is no general rule of law that one acts at his peril in respect to interference with another's use or enjoyment of his land, and therefore when such interferences are purely accidental the actor is not liable for causing them. It is only when unintentional invasions are caused by another's conduct which is negligent, reckless or ultrahazardous that the law subjects the actor to the liability."

and Section 825(a):

> "It is the knowledge which the actor has at the time he acts or fails to act that determines whether the invasion which results from his conduct is intentional or unintentional. It is not enough to make an invasion intentional that the actor realizes or should realize that his conduct involves a serious risk or likelihood of causing such an invasion. He must either act for the purpose of causing it or know that it is resulting or is substantially certain to result from his conduct."

noting the clear adherence to the Restatement Rules evidenced by the North Carolina Supreme Court. The question for which Petitioner seeks review is narrow is scope and devoted to the unusual facts of this case. The substantive law having been properly applied, there is nothing for this Court to review.

3. The decision of the Court of Appeals is correct.

Petitioner attacks the decision of the Court of Appeals as being predicated upon an erroneous interpretation of the substantive law of North Carolina. This attack consists of an attempt to destroy the clear intent of the State court by extracting isolated statements, totally devoid of application to the factual background, and contending that such statements represent the law of North Carolina. Petitioner apparently concedes that the law applied to the facts of this case by the District Court and the Court of Appeals results in the conclusion reached by both courts. His position is simply that the law applied is not the North Carolina substantive law.

The decision below, rendered by Judge Haynsworth demonstrates a careful, in depth, analysis of all of the case authority upon which petitioner relies. It would be useless repetition for Respondent to repeat here what was so clearly pronounced in Judge Haynsworth's opinion. Respondent is content to rest its case upon the opinion of the Court of Appeals. The decision extracts the wheat from the chaff. It separates inference from application of law to facts. It distills the North Carolina Supreme Court opinions to their basic holding as applied to the facts of each case before it. Having done this with a concise and logical approach, the law applicable to the case is clear. It is the law of North

Carolina. It was properly applied by the District Court and the Court of Appeals to the facts before them. The attack on the decision by Petitioner is without merit. His petition should be denied.

CONCLUSION

For the reasons above set forth, Respondent respectfully requests this Court for the entry of an order denying the Petition for a Writ of Certiorari.

Respectfully submitted,

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